



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,397	12/28/2001	Konstantinos Poulakis	42120	8736

7590 08/23/2006

Mark S Bicks
Roylance Abrams Berdo & Goodman
Suite 600
1300 19th Street NW
Washington, DC 20036

EXAMINER

MUSSER, BARBARA J

ART UNIT PAPER NUMBER

1733

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/019,397	POULAKIS, KONSTANTINOS	
	Examiner	Art Unit	
	Barbara J. Musser	1733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 2nd rejections of claims 38 and 42.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 38-42.
Claim(s) rejected: 11-26, 28-37 and 43-45.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

ATTACHMENT

Regarding the finality of the office action, examiner apologizes for the inadvertent inclusion of claim 11 in the new rejection. This claim should not have been included in the rejection over Schulte, Esler, and the admitted prior art. Without the rejection of claim 11, the finality of the office action is correct as only then currently amended claims were rejected under the new grounds of rejection.

Regarding applicant's argument that the declaration is sufficient, while the declaration shows the anti-slip material is glue thinned with solvent, the declaration does not appear to disclose the composition of the profile. Additionally, the declaration does not indicate the glue is rubber, as asserted by applicant. Examiner does not know the properties of glue (SU 4715) or Glue 21 and therefore does not know the softness of the material. While applicant asserts the declaration inherently shows the relationship in softnesses, without property data for the glue, with evidence, such as a trademark, that one in the art reading the declaration would know that a specific glue with specific properties was disclosed, and without evidence of the same for the profile strip, the declaration is not considered to show the anti-slip material is softer than the profile strip.

Regarding applicant's argument that the declaration need only show what is taught by the reference applicant is attempting to overcome, The MPEP clearly indicates that applicant must establish possession of either the whole invention claimed or something falling within the claim in the sense that the claim as a whole reads on it.(MPEP 715.02) When the invention is to a combination of elements(i.e. a strip with anti-slip and a difference in softnesses), a declaration showing one of the elements is

Art Unit: 1733

not sufficient to overcome a rejection based on the combined teachings of one reference teaching one element and another reference teaching the other element. The MPEP indicates that a declaration showing only one element is sufficient when no reference citing the other element is used. However, Esler shows the outer layer being softer than the core. Therefore, applicant's declaration must establish possession of either the whole invention claimed or something falling within the claim in the sense that the claim as a whole reads on it. Foam is considered to be softer than the central reinforcing elements of Esler. While hard foams are known, Esler indicates the foam is velvety. Combined with the knowledge that the strip is a part of a seat that would have direct contact with a person since it was a welting strip, one in the art would appreciate that the foam would be a soft foam rather than a hard foam.

Regarding applicant's argument that Esler does not disclose a structure that would enable the welting cord to connect the fabric to the cushion, the fabric can be connected to the cushion in a variety of ways that would not require any structure on the welting cord such as stitching the fabric on with it, wrapping the fabric around it with the difference in width of the entrance to the longitudinal passage and the base of the passage holding the strip and fabric via the difference in width, and tying the fabric to the cushion. The claim does not require any specific structure to connect the two.

Regarding applicant's argument that the bundle of fibers of Esler is not a shaped strip, applicant has not defined what is meant by a shaped strip. A strip is simply long narrow piece of material, and a bundle of fibers is long and narrow.

Regarding applicant's argument that there is no suggestion in Esler than the foam is softer than the fibers, one in the art would appreciate that foam is softer than fibers. One in the art, touching foam and fibers, would appreciate that the foam is softer. Hardness tests measure the softness of the material, i.e. of the foam, not of the polymer it is made from. The claim does not require the softness to refer to the polymer the plastic is made of. The claim does not exclude the anti-slip material being a foam such as that of Esler, or that the anti-slip characteristics are caused by the difference in softnesses.

Regarding applicant's argument that there is no motivation in Esler to produce a fastener strip having a profile to attach a cover, applicant's argument is not commensurate in scope with the claims since the claims do not require the strip to have a profile to attach a cover to a cushion, only to be a strip for engaging the longitudinal passage.

In response to applicant's argument that Esler does not disclose using the strip to attach a cover to a cushion, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding applicant's argument that the foam of Esler is not applied as a coating to increase anti-slip, the argument is not commensurate in scope with the claims as the claims do not require the anti-slip layer to be a coating, but only that it is provided on the surface of the strip.

Art Unit: 1733

Regarding applicant's argument that a foam coating would not prevent slippage between the foam and the fastener, one in the art, having two pieces of foam, would readily appreciate that they do not slip easily relative to one another. Applicant is reminded that cushions are generally foam, and a simple experiment would readily show that two pieces of foam slip less relative to one another than a smooth surface and a foam surface.

Regarding applicant's argument that the rubber layer of Maruyama is not an anti-slip layer, the fact that the patent does not call the rubber layer an anti-slip layer does not mean that it does not have the property of anti-slip, since it is made of rubber, and applicant has indicated rubber is an anti-slip material.

Regarding applicant's argument that the prior art strips made of anti-slip material would not have suggested applying an anti-slip coating to a normal strip since the anti-slip strip did not increase tear resistance, the prior art strips suggested the use of anti-slip material to prevent the strip from slipping relative to the cushion. That fact that it did not increase tear resistance does not mean it would not prevent slippage of the two materials relative to one another.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone

Art Unit: 1733

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


BJM


RICHARD CRISPINO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700